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MAR 13 2008

Ravalli County Commissioners

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March 10, 2008

Michael W. Sehestedt
Deputy County Attorney
200 W. Broadway
Missoula MT 59802

Re: Missoula Rural Fire District

Dear Mike:

I am so pleased that you responded in writing. As I see it we both use the same Supreme Court case to justify our position. We also use the same part of the judgment of the Court. "prior to the 1957 amendment.)

Now you want me to say that the 1957 amendment solved the problem. So I will read that as follows, Prior to the 1957 amendment that solved the problem"

I have done that. Now I ask you to tell me why the one little word is is in there. I look at the rest of that phrase. It reads "**prior to the 1957 amendment, was and is unconstitutional.**" I think you failed to look at the word, is, seriously.

The statement of the case shows the Supreme Court was asked to consider **two** Constitutional questions. One regarding formation of a district and two **regarding the levy of taxes.** Now we both know the 1957 amendment only related to the creation of the district. So here is what the Supreme Court really said.

Prior to the 1957 amendment, was (both charges were good) and (now only the challenge to the tax question is good but because an entire section must be held unconstitutional if a single part is unconstitutional the entire section) is unconstitutional..

You are not alone in how you read the statute. The attorney general and other State executive officers read it wrong as did the legislature. Thus in 1959 the unconstitutional section, 11-2008 R.C.M. 1947, was not removed from the "books." It has been there ever since and when you took over as deputy County Attorney you were handed what some must have believed was a proper interpretation of the law.

A statute that is unconstitutional is never cured by age nor by continued use. That section was used by the Missoula County Commissioners in 1960 to create the Missoula Rural Fire District. A district can not be created with such a statute.

I was asked by a deputy in the office of the Missoula Clerk and Recorder if I could help her with a problem in the R.F.D. statutes. I did not have the answer. Next I saw in the paper where a Ravalli County Commissioner was concerned about a constitutional question. The Ravalli County Attorney said no problem but he gave me an opinion from his deputy that had the Great Northern case cited. I then studied that case and here we are. This is the first time I remember reading that opinion.

This can only be solved by the legislature. If I file an action and win that will only solve the problem for this County. The problem is state wide and must be done by the legislature. The Missoula R.F.D. has problems and we should do something. The Supreme Court, in the Great Northern case, said we must not permit an unconstitutional statute to stand or deny due process to the taxpayers. I guess I still feel an obligation as a former elected official to do something.

I live in the Florence Carlton school district. That district for years has been unable to pass a much needed school levy. The reason is the fire district levy in Ravalli County and the members, like me, living in Missoula. The Florence fire district this year doubled the tax and the Missoula district raised the tax to 91.130 mills that cost me \$465.00. To me that means the Florence School district will be unable to get another mill levy passed. (I am for the School and believe it is wrong that only the school must ask the taxpayers, at an election, while the rural fire district is given a free hand to ask and the commissioners feel obligated to grant the tax levy) I know due process of law is not operating here.

The School District law meets the constitutional requirements. Can you, or anyone, give me any reason the Rural Fire District should not also be required to meet the constitutional requirements,.

You and the Ravalli County Attorney need not follow the unconstitutional position taken by the State executive officers. You should do as the constitution requires. I offer to join you in getting the legislature to amend this law. This is now a good time with the elections coming. It is no time to wait for someone else.

Sincerely

Copies to:
Ravalli County Attorney
Stacey Mueller, Publisher, Missoulian

